

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF FLORIDA  
PENSACOLA DIVISION

IN RE:

JOEL CREIGHTON ADAMS and  
NINA ROBERTS ADAMS

CASE NO.: 18-30495-KKS  
CHAPTER: 7

Debtors.

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UTAH POWER SYSTEMS, LLC,

ADV. NO.: 18-03014-KKS

Plaintiff,

v.

JOEL CREIGHTON ADAMS and  
NINA ROBERTS ADAMS

Defendants.  
\_\_\_\_\_

**ORDER REQUIRING ADDITIONAL BRIEFING ON *PLAINTIFF'S***  
***MOTION FOR SUMMARY JUDGMENT* (Doc. 88)**

THIS CASE is before the Court on *Plaintiff's Motion for Summary Judgment* ("Summary Judgment Motion," Doc. 88), currently scheduled for hearing on June 2, 2020. Defendants have not filed a response.

In the Summary Judgment Motion, Plaintiff seeks revocation of Defendants' discharge under 11 U.S.C. § 727(d)(1) which provides that the Court shall revoke a discharge if "such discharge was obtained through

the fraud of the debtor, and the requesting party did not know of such fraud until after the granting of such discharge.”<sup>1</sup>

Defendants’ actions, as alleged in the Summary Judgment Motion and supported by the evidence comprising Defendants’ telephonic statements, appear sufficient on which the Court could have denied their discharge. Those actions are also significant enough on which to base revocation of Defendants’ discharge. The unrefuted evidence shows that Defendants deliberately and in bad faith concealed and failed to list assets and transfers of assets in their Schedules and Statement of Financial Affairs. Plaintiff has met the first of the two prongs of Section 727(d)(1), which is that a court may revoke a debtor’s discharge if “such discharge was obtained through the fraud of the debtor . . . .”<sup>2</sup>

But the Court requires additional briefing on the second prong of § 727(d)(1), which is that “the requesting party did not know of such fraud until after the granting of such discharge.”<sup>3</sup> The sole evidence on which Plaintiff bases its case was obtained post-petition and post-discharge in

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<sup>1</sup> 11 U.S.C. § 727(d)(1) (2020).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

an unrelated state court litigation between the parties.<sup>4</sup> According to the declaration in support of Plaintiff's Summary Judgment Motion, Plaintiff did not subpoena transcripts of these telephone conversations until August 21 and 29 of 2018, less than a month before the deadline to object to Defendants' discharge was set to expire.<sup>5</sup>

Defendants commenced their administrative bankruptcy case on May 22, 2018.<sup>6</sup> Counsel for Plaintiff made an appearance on May 25, 2018.<sup>7</sup> The §341 Meeting of Creditors was held on July 20, 2018.<sup>8</sup> The Order of Discharge was entered on September 24, 2018.<sup>9</sup> Plaintiff filed its Complaint commencing this adversary proceeding on October 12, 2018.<sup>10</sup> Plaintiff has been represented by competent counsel during the

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<sup>4</sup> "In an unrelated state court case, Utah Power subpoenaed Miami-Dade County and Okaloosa County in an attempt to acquire relevant information concerning its claim against defendants in that lawsuit . . . . On August 21 and 29, 2018, Utah Powers served Okaloosa County and Miami-Dade County, respectively, with subpoenas requesting the recordings . . . . After the Defendants received their discharge, Utah Powers obtained the audio recordings . . . ." Doc. 88, p. 5.

<sup>5</sup> Doc. 88-3, p. 2.

<sup>6</sup> *In re Adams*, Case No 18-30495-KKS, Doc. 1, *Voluntary Petition for Individuals Filing for Bankruptcy* (Bankr. N.D. Fla. May 22, 2018).

<sup>7</sup> *In re Adams*, Case No 18-30495-KKS, Doc. 13, *Notice of Appearance* (Bankr. N.D. Fla. May 25, 2018).

<sup>8</sup> *In re Adams*, Case No 18-30495-KKS, Doc. 6, *Notice of Chapter 7 Bankruptcy Case – No Proof of Claim Deadline* and Doc. 37, Docket entry – 341 Meeting of Creditors was held and concluded (Bankr. N.D. Fla. 2018).

<sup>9</sup> *In re Adams*, Case No 18-30495-KKS, Doc. 48, *Order of Discharge* (Bankr. N.D. Fla. Sept. 24, 2018).

<sup>10</sup> Doc. 1.

pendency of the entire bankruptcy case. But the docket in the administrative bankruptcy case evidences no effort by Plaintiff to engage in discovery of any kind about Defendants' assets, transfers, or possible inheritance through a Rule 2004 examination or otherwise prior to the entry of the discharge.

Without question, these Debtors have a proven track record of avoiding discovery.<sup>11</sup> But the fact remains that there is a dearth of evidence showing post-petition diligence by Plaintiff that would justify revoking Defendants' discharge. A creditor is required to have exercised diligence in investigating the facts during the administrative bankruptcy case, especially after having been put on notice of possible fraud.<sup>12</sup>

Plaintiff's Summary Judgment Motion does not directly address this requirement of Section 727(d)(1). Plaintiff alleges that it was not on notice of Defendants' fraud until after the discharge was entered. But the telephone transcripts show that Defendants made their incriminating statements in April, May and June of 2018; before and very soon after they filed their Chapter 7 petition.<sup>13</sup> It is unclear whether Plaintiff was

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<sup>11</sup> *See, e.g., Contempt Order*, Doc. 76.

<sup>12</sup> *421 Chestnut Partners, LP v. Aloia*, 496 B.R. 366, 381 (Bankr. E.D. Pa. 2013) (citing 6 Collier on Bankruptcy, ¶ 727.17[3] (16th ed. 2012)).

<sup>13</sup> Doc. 88-3, pp. 3-14.

sufficiently diligent in investigating possible undisclosed assets and transfers before the Court entered the discharge. Under certain circumstances, in the absence of diligence by the creditor revocation of a debtor's discharge is improper.<sup>14</sup> For the reasons stated, it is,

**ORDERED:** Plaintiff has until May 26, 2020, within which to file and serve a supplemental memorandum and supporting affidavits or other evidence specifically addressing the second (notice and diligence) prong of 11 U.S.C. § 727(d)(1): whether under the applicable case law Plaintiff “did not know of such fraud until after the granting of [Defendants'] discharge.”

DONE AND ORDERED on May 12, 2020.



KAREN K. SPECIE

Chief U. S. Bankruptcy Judge

cc: All parties in interest

Plaintiff's attorney is directed to serve a copy of this Order on interested parties and to file a Proof of Service within three (3) days of entry of this Order.

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<sup>14</sup> *In re Habash*, 360 B.R. 775, 778-79 (N.D. Ill. 2007). *See, also, In re Kalia*, 202 B.R. 600, 604 (Bankr. N.D. Ill. 1996) (“[i]f the creditor could have known of the alleged fraud, it has an affirmative duty to so investigate before the discharge is granted or the court will dismiss the requested revocation.”); *In re Arianoutsos*, 116 B.R. 116, 118 (Bankr. N.D. Ill. 1990) (creditor was in possession of enough information to put them on notice that schedules might be false); *In re Stein*, 102 B.R. 363, 367 (Bankr. S.D.N.Y. 1989) (“[w]hen the objecting plaintiff acted diligently in investigating the debtor's conduct and did not know, and did not have reason to know, that the debtor procured his discharge through fraudulent conduct, the objecting party may obtain an order revoking the debtor's discharge.”).